Supreme Court, U.S.
FILED
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No. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

IRENE T. RUSSO d/b/a JAY BROKERS – PETITIONER

VS

US DEPT OF AGRICULTURE – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

IRENE RUSSO
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QUESTIONS PRESENTED

1. Why was the Jencks Act overlooked?

2. Why was Jay Brokers company tied in as a Joint venture with PDI, when I, Irene Russo, Stated under oath, that there never was one, Never any legal documents set up or signed By both parties. There must be laws with Jay Brokers being located in New York and PDI located in New Jersey that attorneys Must file for both companies protection?

3. Why after PDI's president, Mr.Gangemi,Jr. Also stated under oath that there was never a Joint venture agreement with Jay Brokers was this ignored?

4. How can the USDA state that PDI and Jay Brokers were in a joint venture when there Never was a joint venture?

5. Why did the USDA make PDI's inner office System , ie: paying all his bills, purchasing Merchandise, receiving payments, giving Credits and paying all their expenses into a Joint venture with Jay Brokers?

6. Why were my arguments considered to be Without merit, when I stated clearly from the beginning that none of the files and records were Jay Brokers, they were all Exclusively all of PDI's.

7. Why was I, Irene Russo d/b/a Jay Brokers Never officially notified of an investigation Bringing in my company? Why? Is there any type of law to protect my rights As an owner of a small business against The USDA from saying that there was a Joint venture between my company or any Company?

8. Why, was the investigating officer allowed to go into the witness room and discuss the case with the witnesses and intimidate them, even after Judge Bernstein corrected her not to, she continued to do so? Is that not called tampering with the witnesses?

9. Why, and is it against the law for a wife to Help her husband. Why was this turned into A subterfuge by the USDA?

10. Why, was the so called credible witnesses Statements, under oath, used against me, when all their testimonies had Major Contradictions?

11. Why, were the testimonies of Sunkist Growers and Sunworld Int'l. of California, Two of the biggest shippers and growers In the produce industry, who did millions Of dollars of business with PDI over Numerous years, why, was their testimony

excluded on my behalf. They must know if there were any partners or joint venture agreements with PDI and Jay Brokers or any other companies, before they conduct any business. They stated under oath, that there was no joint venture between Jay Brokers and PDI and their statements were not used on my behalf as proof of my innocence.

12. Why, then, isn't there a law to protect me, Irene Russo, a woman who owns a small business. Where is the law against the USDA or anyone from discrediting and printing false accusations against me and my company and saying there was a joint venture with PDI throughout all the produce Industry?

13. Why, is the USDA trying to take my Livelihood away from me and my family, by Hurting my reputation, which has been Impeccable since I've been in business Estimating at least eleven years?

14. Why, on just the word of one single Investigator, who over a period of years, Did not take or chose not to show any notes or memorandums of her investigation. Why can the USDA accuse me, Irene Russo, owner of Jay Brokers, when people have testified under oath that there was never a joint venture agreement or involvement of Irene Russo d/b/a Jay Brokers with Produce Distributors, Inc.? Why?

LIST OF ALL PARTIES

Petitioners herein are Irene Russo d/b/a Jay Brokers.

The Claimants are the United States Department of Agriculture.

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STATEMENT OF CASE

Your Honors,
This investigation all stems from the very beginning when I, Irene Russo invited Roberta Rucker, from the PACA, USDA office into my home and I clearly stated to her that this is my home and the office of Jay Brokers. I stated, that my husband, Joseph Russo worked as a salesman for PDI and Ms. Rucker asked to speak to him on matters pertaining to PDI. I also told her that my husband utilizes space in my office. From that moment on, this investigator turned Irene Russo d/b/a Jay Brokers into a joint venture with PDI., without any further investigating throughout the Industry. I, Irene Russo d/b/a Jay Brokers had no involvement with how PDI distributes or accounts for their systems. Or how they distributes their monies.

I had no knowledge of how PDI or salesman, Joseph Russo conducted their business. I never was a participant in any price or produce distribution to any customers or shippers for PDI.

The USDA is claiming that I received 40% (I don't know if that is the correct amount) as proof of a joint venture from these fraudulent transactions. The monies I received were at the sole discretion of Joseph Russo. The reasons Joseph Russo did this, I assume was because he used my office, office equipment, telephone, utilities, fax machine, etc. This took up much of my time because of his lack of good penmanship and his over abundance of sale calls, which necessitated that I help in answering calls for him. I do not know if you are aware that at that time I was running my own small business, Jay Brokers, and that by my helping my husband, Joseph Russo felt that he was taking away much of my time from my own customers and my own business and that is why Joseph Russo compensated me.

The testimonies provided by each and everyone of the witnesses, who were subpoened twice by myself: Carole Dowe, Thomas Gangemi, III, Paul Martucci were full of many major contradictions. These contradictions show me that there was malicious intent in their testimony, with the exception of Alan Pollack.

In the Summary Order, the sole investigator, Ms. Rucker, throughout all of this investigation, testified she had notes and journals, then claimed she didn't have them and if she did have them, she didn't know where they were, or if they were even still in existence. Isn't this a violation of the Jencks Act? In the Summary Order, this was dismissed as having no merit.

Ms. Rucker, the sole investigator tampered with the witnesses and the evidence presented. Ms. Rucker was in the witness room before the witnesses testified and I know Ms. Rucker prejudiced their testimony before they testified. She was instructed by Judge Bernstein to not go into the witness room and speak with the witnesses. In fact, she returned again and again.

I believe a fundamental error happened when, Judge Bernstein would not allow Mr. Thomas Gangemi, Jr. sworn affidavit into evidence from the beginning of the investigation. Mr. Gangemi, Jr. states from the beginning that there was no joint venture agreement between his company PDI and myself, Irene Russo and Irene Russo d/b/a Jay Brokers, as I also stated under oath.

REASONS FOR GRANTING THE WRIT

I, Irene Russo d/b/a Jay Brokers was never in a joint venture agreement with PDI. Also I was never in a joint venture agreement with Joseph Russo, salesman for PDI.

The 40% mentioned in the Summary Order that was paid to Jay Brokers, was an arrangement between PDI and their salesman, Joseph Russo, who instructed Mr. Gangemi, Jr. to pay me. Which Mr. Gangemi, Jr. testified under oath were all funds earned by Joseph Russo. I had nothing at all to do with PDI's office mechanics, paperwork, files, etc. I stated under oath that I merely helped my husband as a copy clerk. I never negotiated any of PDI's files. Mr. Gangemi, Jr. stated under oath that he never negotiated an agreement with me or my company. Please review Mr. Gangemi Jr.'s testimony, this man had nothing to gain or lose by repeating that there was never a joint venture agreement with Irene Russo d/b/a Jay Brokers. He states, "I run a very, very, very tight ship, I am a – my personality, one in total control, and that is the way I operate my office. The people in my office knew only what I told them, and if they assumed by conjecture or by appearance, that's purely an assumption. I'm here under oath to tell you I have never negotiated a deal with Irene. Now, I'm not here to protect Jay Brokers, I'm not here to do anything other than tell you the Truth. We never had a negotiated agreement between Jay Brokers, Irene Russo and Buddy Gangemi, Thomas Gangemi, Jr., Produce Dist. I cannot be more emphatic. And it is not my purpose to protect her, if I'm here under oath to tell the truth and that is exactly what I'm giving you. Now, you can paint it in any number of ways. The assumption of this one and the assumption of that, or how it may have appeared to one or how it may have appeared to

Someone else. The truth of the matter is, I did not negotiate an agreement with the wife of Joe Russo or her company. I don't know how else to put it, but that's the honest simple truth."

There are no joint venture agreement papers, partnership papers, no paper trail, no advertising of any kind that would put Jay Brokers in a joint venture with PDI. There is only hearsay and gossip.

I know that I was wrongly accused of the alleged acts and association as a joint venture with PDI.

There were major contradictions in the testimony given by the very witnesses that are cited by the Judges in the Summary Order. The Court states that these witnesses: Dowe, Martucci and Gangemi, III, and their testimonies prove that there was a joint venture between PDI and Jay Brokers. Please look again at the testimony given and the many major contradictions. Please reread their testimonies and you will see that there was and is glaring discrepancies in all their testimonies. I believe these three witnesses were hostile witnesses and testified with malicious intent because they were subpoened twice. This took them away from their daily lives. The fourth witness cited by the Judge, Alan Pollack, testified over and over, no joint venture, etc. and yet the courts states even his testimony proves there was a joint venture. Read this testimony and tell me how his testimony proves a joint venture? The irony of them finding in favor of the USDA using these witnesses testimonies to show proof of a joint venture had in all actuality no physical evidence, they only had gossip and hearsay.

The one investigator, Ms. Rucker was told by Judge Bernstein not to speak with the witnesses in the witness room. Please read the testimony of Thomas Gangemi, III, the son of the president of PDI, where he states: "You know, I'm a little confused on the broker issue on account of I was talking to Roberta earlier (that was in the witness Room) and we were talking about, you know, brokers and things – and the way, you know, I conduct business, and you know, it doesn't seem like I was acting as a true broker the way she was explaining it to me." This investigator was clearly tampering with the witnesses. Ms. Rucker had legal jurisdiction over each and every witness that came to the hearing. She tainted their testimony at the hearing. She held power over many of these witnesses since she represents the USDA. I believe the witnesses were intimidated by her presence in the witness room and by her discussions of what was right in her opinion in this case. I believe that this investigator, tampered with the witnesses, isn't this against the law?! I do not believe that she had the right to write my name all over PDI's jackets (files) as evidence that were presented against me. I believe this is tampering with evidence and that this also changed the original composition of any evidence she presented. This same investigator, the only investigator, throughout the hearings never once presented any notes, memorandum, journals showing her investigations and this was brought out at the hearings. This is a violation of the Jencks Act. Ms. Rucker changed all of PDI's jackets by writing Jay Brokers on each and every one, when, in fact, they were all PDI's jackets.

Regarding the testimony of Paul Martucci, the CPA for PDI, when Mr. Omansky questions him as follows: "all

right, and you're telling us that Joe Russo was a sub-contractor or a co-broker?" Mr. Martucci says: "Correct" Omansky asks: "is the way you're describing it". Judge Bernstein says: "No, *I think* he said joint venture". This is one example of bais towards me at the hearings. Mr. Martucci then says: "Joint venture is the way – that's the word that was always used." Judge Bernstein put words (joint venture) in Mr. Martucci's mouth.

In spite of the fact that Judge Bernstein preferred to call it a joint venture, Mr. Martucci ended his testimony by saying: "My answer would be if he received a W-2, then He's an employee".

Judge Bernstein appeared to be prejudiced, because if you read through the testimonies it shows that Judge Bernstein aided the witnesses and help to provide detrimental answers to my case. The Judge chose not to use any of the testimony that stated no joint venture (ex: Sunkist & Sunworld, etc.).

Ms. Hart, the respondents attorney, also put words in the mouth of many of the witnesses. She practically answers for Ms. Dowe, feeding her word for word. Please review Ms. Dowe's testimony.

I have been operating in the produce business since 1988 and I have an excellent reputation throughout the industry. I need my license to operate my business, without my license I will loose my livelihood. I should not be held responsible for any behavior that PDI, Mr. Thomas Gangemi, Jr. or salesman for PDI, Joseph Russo were involved in. Mr. Gangemi, Jr., president of Produce

Distributors, Inc. surrendered his license and has admitted his responsibility and guilt. I do not have a photographic memory or total recall, but I know with certainty, that if any handwriting was on any notes for PDI, I simply wrote whatever Joseph Russo, Salesman for PDI instructed me to write as a secretary or as a wife helping her husband. The fact, that I was not employed by PDI or in a joint venture with PDI, or Joseph Russo, I had absolutely no authority to negotiate or be in any decision making.

Please, I was never involved in PDI's business, I never had a joint venture, never negotiated any business for PDI's.

U.S. Dept of Agriculture
D-97-0013

United States Court of Appeals
For the Second Circuit
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 28th day of October, one thousand nine hundred and ninety-nine.

PRESENT:

Hon. Roger J. Miner,
Hon. John M. Walker, Jr.,
Hon. Robert A Katzmann,
Circuit Judges

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IRENE T. RUSSO d/b/a JAY BROKERS,
Petitioner,

-v- 99-4065

UNITED STATES DEPARTMENT OF AGRICULTURE,
Respondent.

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APPEARING FOR PETITIONER:
IRENE T. RUSSO, pro se,
Orangeburg, N.Y.

APPEARING FOR RESPONDENT:
LIBBI J. BASHEIN, Attorney,
Office of the General Counsel,
U.S. Dept. of Agriculture (James
Michael Kelly, Associate
General Counsel, Margaret M.
Breinholt, Acting Assistant
General Counsel, on the brief),
Washington, D.C.

Petition for review of an order of the Secretary, United States Department of Agriculture (Jenson, J.O.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the order of the Secretary be and it hereby is AFFIRMED.

Petitioner pre se Irene Russo d/b/a Jay Brokers ("petitioner") petitions for review of a March 23, 1999 order of the Secretary of the Dept. of Agriculture (the "DOA") revoking petitioner's license under the Perishable Agricultural Commodities Act of 1930 ("PACA"), 7 U.S.A. SS 499a-499s.

On appeal, petitioner raises the following arguments: (1) the Secretary's decision that petitioner committed willful, repeated, and flagrant violations of section 2(4) of PACA was not supported by substantial evidence, (2) the Secretary's failure to give written notice of its investigation to petitioner violated section 6(c) of PACA, as amended, (3) the DOA committed violations of the Jencks Act, (4) improper communications were made between a DOA witness and other witnesses, and (5) the Administrative Law Judge (the "ALJ") was biased.

The Secretary's findings of fact must be upheld on review by this court if they are supported by substantial evidence. See Havana Potatoes of New York Corp. v United States, 136 F.3d 89, 91 (2d Cir. 1997). We have carefully reviewed the record and find that the Secretary's findings were amply supported by both documentary and testimonial evidence.

The basis structure of the fraudulent consignment scheme is not disputed. Joseph Russo, petitioner's husband, worked as a sales representative for Produce Distributors, Inc. ("PDI"), arranging consignment sales of produce. A23, 240, 385-86. PDI would represent to growers that a larger percentage of their produce had been dumped as spoiled or damaged than was the case, thereby under-representing the proceeds of its sale. PDI would Then pocket the difference. A28, A55-56. The DOA presented evidence of 41 separate fraudulent transactions, and six "prototype" transactions were explored in detail at the hearing before the ALJ. A28-33, A57-66. PDI's financial records and canceled checks presented at the hearing showed that for each one of the fraudulent transactions, PDI would pay petitioner forty percent of its total profits, including the portion due to fraud. A112-29, 214-19. The financial records also showed that Joseph Russo's salary and PDI's expenses in listing him as an Employee were deducted from the forty percent paid over to petitioner. A237-39. Petitioner actively participated in the fraudulent transactions, personally writing notes to several of the growers asking them to accept less money for

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITES STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18th day of February two thousand.

Present:
Hon. John M. Walker Jr.
Hon. Roger J. Miner
Hon. Robert A. Katzmann,

CIRCUIT JUDGES

Russo,
Petitioner,

v. Docket No. 99-4065

U.S. Dept. of Agr.,
Respondent.

A petition for panel rehearing having been filed herein by Irene T. Russo
Upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
KAREN GREVE MILTON, Acting Clerk

By:
Beth J. Meador,
Administrative Attorney

investigation of PDI in May 1995, and expanded the investigation to include petitioner in June 1995, several months before the notification provision became effective. Given the strong presumption against the retroactive application of legislation, see, e.g., Henderson v. INS, 157 F. 3d 106, 129 (2d Cir. 1998), we see no reason to apply the amendment to section 6 (c) retroactively. Statues are not ordinarily afforded retroactive application unless "Congress has clearly manifested its intent to the contrary." Hughes Aircraft co. v United States ex rel. Schumer, 520 U.S. 939,946 (1997). Therefore we find there was no violation of the notification requirement.

We have considered petitioner's other arguments and find them to be without merit.

The order of the Secretary is hereby AFFIRMED.

FOR THE COURT:
KAREN GREVE MILTON, Acting Clerk
By:

Lucille Carr, Deputy Clerk